

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MICHAEL AVENATTI,

Defendant.

19 Cr. 374

**DEFENDANT MICHAEL AVENATTI'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION FOR A JURY QUESTIONNAIRE**

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I. Introduction

Defendant requests that the Court consider allowing a questionnaire for prospective jurors in advance of trial. Said questionnaire will move the jury selection process more quickly and will tend to uncover bias more readily than oral questioning.

II. The Law

Questionnaires have been granted in numerous high profile federal criminal cases in this Circuit:

- ▶ *U.S. v. Loera*, __ F.Supp. 3d __ (E.D.N.Y. 10-30-2018) WL 5624143, (El Chapo case)
- ▶ *U.S. v. Delva* 858 F.3d 135 (2nd Cir. 2017), (high profile kidnapping and robbery case)
- ▶ *U.S. v. Nix* 275 F.Supp 3d 420 (W.D. N. Y. 2017), (12 counts alleging violations of the Hobbs Act, 18 U.S.C. § 1951(a), and related firearms and narcotics charges, all in connection with a spree of violent home invasions)

A questionnaire is needed here because both the alleged victim (S.C., also known as S.D.) and the defendant are nationally known, both together and individually. The media attention to both of them has been intense over the last two

years, including national political overtones. Indeed, Mr. Avenatti briefly ran for President of the United States.

Surely many prospective jurors have strong feelings or have made assumptions about the guilt or innocence of the defendant, based in large part on media coverage and perhaps their own political views. A questionnaire will help unearth such feelings and assumptions. It can gauge awareness of the case by a prospective juror (e.g., how much have the jurors heard about the case and what do they recall?).

III. "Mechanics"

The defense proposes to work with government counsel to draft an agreed upon questionnaire. The defense envisions filing such a document for the Court's review 30 days before trial, with the following actions governing the questionnaire:

1. The written juror questionnaire and instructions should be given to prospective jurors one week prior to the commencement of jury selection after the Court reads a summary of the charges or a redacted indictment as the Court may determine;
2. Prospective jurors should be directed to complete the questionnaire;
3. The Clerk should collect the completed questionnaires and promptly provide the completed questionnaires to designated counsel;

4. Designated counsel should promptly scan the completed questionnaires, provide an electronic copy of all completed questionnaires to all counsel, and return the original completed questionnaires to the Clerk; and
5. The completed questionnaires should be kept confidential and used only for the purpose of jury selection in this case.

In a parallel case in Judge Gardephe's court (*U.S. v. Michael Avenatti*, CR-19-373-PGG), the parties are submitting a questionnaire shortly. Defense counsel in this matter would plan to alter the facts and questions to fit the instant case from the questionnaire in that parallel case. There may be other issues that need to be included, but the questionnaire from that case would make a useful template.

IV. Conclusion

For the reasons above, the defense asks the Court to issue an order allowing jury questionnaires in the format above, or one with modifications by the Court.

Dated: Nov. 11, 2019

/s./ H. Dean Steward

H. Dean Steward
Counsel for Defendant
Michael Avenatti

CERTIFICATE OF SERVICE

I hereby certify that on Nov. 11, 2019, I caused a true and correct copy of the foregoing to be served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notes.

/s/ H. Dean Steward

H. Dean Steward